

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1949

Introduced by Assembly Member Jerome Horton

February 2, 2006

~~An act to amend Section 11172 of the Penal Code, relating to child abuse.~~ *An act to amend Section 19613.3 of the Business and Professions Code, relating to horse racing.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1949, as amended, Jerome Horton. ~~Child abuse: reporting.~~
Horse racing.

Existing law provides for the recognition of horsemen's and horsewomen's organizations by the California Horse Racing Board. Each organization, except for the thoroughbred horsemen's and horsewomen's organizations, and except an organization that solely represents owners, or solely represents trainers, shall provide for the representation of owners and trainers on its board of directors. Each thoroughbred horsemen's and horsewomen's organization, except one that solely represents trainers, shall provide for the representation of owners and owner-trainers on its board. Existing law provides that the organization representing owners who are also licensed as trainers, and their spouses who are licensed as owners, shall comprise a class of owner-trainers, which may elect 3 of its members to the board of directors of the owner's organization, while all other directors shall be owners and not owner-trainers. The board of the thoroughbred owners' organization shall not exceed 15 members and all members shall have equal standing. Existing law further provides that the thoroughbred trainers' organization may appoint 3 persons

who qualify as owner-trainers, to the board of the thoroughbred owners' organization. This provision will be repealed as of January 1, 2007.

This bill would require that the Board of Directors for the thoroughbred trainers' organization and thoroughbred owners' organization to appoint 3 mutually agreed upon persons who qualify as owner-trainers to the board of the thoroughbred owners' organization. This bill would maintain these provisions in effect until January 1, 2008.

~~(1) Existing law identifies those persons who are mandated reporters for purposes of reporting child abuse. Existing law requires the reports filed by mandated reporters concerning abuse and neglect to include certain specified information about the victim and the information that gave rise to the suspicion of abuse and its source. Under existing law, a mandated reporter shall not be civilly or criminally liable for a report authorized by these provisions.~~

~~This bill would prohibit immunity from civil or criminal liability for an official or employee of a government agency who is a mandated reporter and, within the scope of his or her official duties, that official or employee, intentionally or with a reckless disregard for the truth, misrepresents child abuse or neglect, as specified.~~

~~(2) This bill would make other technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19613.3 of the Business and Professions
2 Code is amended to read:
3 19613.3. (a) Except as provided in subdivision (b), (c), (d),
4 and (e) relating to thoroughbred horsemen's organizations, each
5 horsemen's organization, except an organization that solely
6 represents owners, or an organization that solely represents
7 trainers, shall provide for the representation of owners and
8 trainers on its board of directors. The provisions setting forth the
9 composition of the board of directors of each organization shall
10 be in the bylaws of the organization and shall be submitted to the
11 board. The bylaws and any changes thereto shall be approved by
12 the board.

(b) Each thoroughbred horsemen's organization, except an organization that solely represents trainers, shall provide for the representation of owners and owner-trainers, as defined in subdivision (c), on its board of directors. The provisions setting forth the composition of the board of directors of each organization shall be in the bylaws of the organization and shall be submitted to the board. The bylaws and any changes thereto shall be approved by the board.

(c) The organization representing owners shall provide in its bylaws that owners who are also licensed as trainers, and their spouses who are licensed as owners shall comprise a class of owner-trainers, which may elect three of its members to the board of directors of the organization representing owners. All other directors shall be owners as defined in Section 19613, and shall not be members of the class of owner-trainers.

(d) The board of directors of the thoroughbred owners' organization shall not exceed 15 persons, and all members of the board shall have equal standing. No person other than a duly elected or appointed member of the board of directors shall be entitled to vote on matters that are subject to the vote of the board.

(e) The *Board of Directors of the* organization representing thoroughbred trainers *and the organization representing thoroughbred owners* may, upon the effective date of this section, appoint three *mutually agreed upon* individuals who qualify as members of the class of owner-trainers as described in subdivision (c) to the board of directors of the organization representing thoroughbred owners. ~~These appointees shall hold these positions until members of the class are elected to fill the positions, no later than July 1, 2003.~~ This section shall remain in effect only until January 1, ~~2007~~ 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2007~~ 2008, deletes or extends that date.

~~SECTION 1. Section 11172 of the Penal Code is amended to read:~~

~~11172. (a) No mandated reporter shall be civilly or criminally liable for a report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or~~

1 outside the scope of his or her employment. A person reporting a
2 known or suspected instance of child abuse or neglect shall not
3 incur civil or criminal liability as a result of a report authorized
4 by this article unless it can be proven that a false report was made
5 and the person knew that the report was false or was made with
6 reckless disregard of the truth or falsity of the report, and a
7 person who makes a report of child abuse or neglect known to be
8 false or with reckless disregard of the truth or falsity of the report
9 is liable for damages caused. No person required to make a report
10 pursuant to this article, nor a person taking photographs at his or
11 her direction, shall incur civil or criminal liability for taking
12 photographs of a suspected victim of child abuse or neglect, or
13 causing photographs to be taken of a suspected victim of child
14 abuse or neglect, without parental consent, or for disseminating
15 the photographs with the reports required by this article.
16 However, this section shall not be construed to grant immunity
17 from this liability with respect to other uses of the photographs.

18 (b) ~~Subdivision (a) shall not apply to a mandated reporter who~~
19 ~~is an official or employee of the state, a city, county, city and~~
20 ~~county, district, or other political subdivision of the state, if all of~~
21 ~~the following apply:~~

22 (1) ~~That official or employee is required to report an incident~~
23 ~~or reasonable suspicion of child abuse or neglect in his or her~~
24 ~~professional capacity or in the scope of his or her employment.~~

25 (2) ~~That official or employee intentionally or with reckless~~
26 ~~disregard of the truth or falsity of a report misrepresents or~~
27 ~~conceals an incident or reasonable suspicion of child abuse or~~
28 ~~neglect.~~

29 (3) ~~There is clear and convincing evidence that absent the~~
30 ~~conduct described in paragraph (2) a different result or decision~~
31 ~~related to that incident or reasonable suspicion of child abuse~~
32 ~~would have been reached.~~

33 (c) ~~A person, who, pursuant to a request from a government~~
34 ~~agency investigating a report of suspected child abuse or neglect,~~
35 ~~provides the requesting agency with access to the victim of a~~
36 ~~known or suspected instance of child abuse or neglect shall not~~
37 ~~incur civil or criminal liability as a result of providing that~~
38 ~~access.~~

39 (d) ~~The Legislature finds that even though it has provided~~
40 ~~immunity from liability to persons required or authorized to~~

1 ~~make reports pursuant to this article, that immunity does not~~
2 ~~eliminate the possibility that actions may be brought against~~
3 ~~those persons based upon required or authorized reports. In order~~
4 ~~to further limit the financial hardship that those persons may~~
5 ~~incur as a result of fulfilling their legal responsibilities, it is~~
6 ~~necessary that they not be unfairly burdened by legal fees~~
7 ~~incurred in defending those actions. Therefore, a mandated~~
8 ~~reporter may present a claim to the State Board of Control for~~
9 ~~reasonable attorney's fees and costs incurred in an action against~~
10 ~~that person on the basis of making a report required or authorized~~
11 ~~by this article if the court has dismissed the action upon a~~
12 ~~demurrer or motion for summary judgment made by that person,~~
13 ~~or if he or she prevails in the action. The State Board of Control~~
14 ~~shall allow that claim if the requirements of this subdivision are~~
15 ~~met, and the claim shall be paid from an appropriation to be~~
16 ~~made for that purpose. Attorney's fees awarded pursuant to this~~
17 ~~section shall not exceed an hourly rate greater than the rate~~
18 ~~charged by the Attorney General of the State of California at the~~
19 ~~time the award is made and shall not exceed an aggregate amount~~
20 ~~of fifty thousand dollars (\$50,000).~~

21 ~~(e) Subdivision (d) shall not apply if a public entity has~~
22 ~~provided for the defense of the action pursuant to Section 995 of~~
23 ~~the Government Code.~~

24 ~~(f) A court may award attorney's fees and costs to a~~
25 ~~commercial film and photographic print processor if a suit is~~
26 ~~brought against the processor because of a disclosure mandated~~
27 ~~by this article and the court finds this suit to be frivolous.~~